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No. 91-154

In The

Supreme Court of the United States

October Term, 1991

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Petitioner,

v.

MAGGIO, INC.,

Respondent.

Petition For A Writ Of Certiorari To The California Court Of Appeal For The Fourth Appellate District

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MARCELLE E. MIHAILA
JAY W. JEFFCOAT
Counsel of Record
GRAY, CARY, AMES & FRYE
401 B Street, Suite 1700
San Diego, California 92101-4297
(619) 699-2742

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED FOR REVIEW

1. After a plaintiff-employer proves that each and every element of its claimed damage was substantially and proximately caused by a labor union's violent and unlawful picketing, does the union then properly have the burden to prove which of the employer's damages, if any, resulted from lawful strike conduct?

2. Does the Supreme Court have jurisdiction to review a decision by an intermediate state appellate court when the highest court of the state denied discretionary review in 1985?

3. Does the denial of a labor union's motion to disqualify a trial judge two months into trial constitute a violation of due process where the sole basis for the disqualification motion was the fact that six years before trial, the trial court judge's wife worked for two days in a carrot shed as a replacement worker and where the labor union has not cited a single instance of bias by the trial judge during the two months of trial?

PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding in the California Court of Appeal were the United Farm Workers of America, AFL-CIO and Maggio, Inc.

TABLE OF CONTENTS

Page

OPINION BELOW 1

CONSTITUTIONAL PROVISIONS INVOLVED 2

JURISDICTION 2

INTRODUCTION 3

STATEMENT OF THE CASE 5

A. Factual Background 5

B. Procedural Background 6

1. Trial Court Proceedings 6

2. California Court of Appeal Proceedings .. 7

3. California Supreme Court Proceedings 7

4. The UFW Attempts to Stay Execution on the Judgment 8

a. The Lower Courts' Decisions 8

b. Justice O'Connor Denies the UFW's Request for a Stay 8

5. The 1985 Proceedings on the Motion to Disqualify the Trial Judge 9

REASON FOR DENYING THE PETITION 10

I The UFW's Reargument of the Proximate Causation Evidence Does Not Meet the Supreme Court Rule 10 Standard of Presenting a Special of Important Reason for Review by Writ of Certiorari 10

A. The Decisions Below Do Not Conflict With This Court's Decisions 11

TABLE OF CONTENTS – Continued

Page

B. The Decisions Below Do Not Conflict With Other State or Federal Court Decisions 12

II This Court Has No Jurisdiction to Review the Issue Concerning Disqualification of the Trial Judge 19

III Even on the Merits, the Disqualification Issue Does Not Warrant Supreme Court Review 20

CONCLUSION 21

TABLE OF AUTHORITIES

Page

CASES

Department of Banking v. Pink, 317 U.S. 264 (1942) 20

Fibreboard Paper Products Corp. v. East Bay Union of Machinists, 227 Cal.App.2d 675 (1964) 15, 16, 17

Frito Lay, Inc. v. Local U. No. 137, Intern. Broth. (9th Cir. 1980), 623 F.2d 1354 *cert. denied*, 449 U.S. 1013 14

Haft v. Lone Palm Hotel, 3 Cal.3d 756 (1970) 17

Maggio, Inc. v. United Farm Workers, 227 Cal.App.3d 847 (1991) 17

Mead v. Retail Clerks Int. Ass'n, Local 839, 523 F.2d 1371 (9th Cir. 1975) 14

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) 11

Pantex Towing Corp. v. Glidewell, 763 F.2d 1241 (11th Cir. 1985) 14

Rainbow Tours, Inc. v. Hawaii Joint Council, 704 F.2d 1443 (9th Cir. 1983) 14

Stryjewski v. Local Union No. 830, 451 Pa. 550, 304 A.2d 463 (1973) 18, 19

Superintendent v. Hill, 472 U.S. 445 (1985) 10

United Aircraft Corp. v. Int'l. Ass'n. of Machinists, et al., 161 Conn. 79, 285 A.2d 330 (1971), *cert. denied*, 404 U.S. 1016 (1972), *on appeal following remand*, 169 Conn. 473, 363 A.2d 1068 (1975) *cert. denied*, 425 U.S. 973 (1976) 17, 18

United Mine Workers v. Gibbs, 383 U.S. 715 (1966) 11, 14, 16, 17, 18

STATUTES

28 U.S.C. § 2101(c) 20

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TO THE HONORABLE WILLIAM H. REHNQUIST, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent Maggio, Inc. ("Maggio") respectfully submits this Opposition to the Petition for Writ of Certiorari filed by the United Farm Workers of America, AFL-CIO ("UFW"):

OPINION BELOW

The decision of the District Court of Appeal of the State of California, Fourth Appellate District, Division

One, is attached to the UFW's Petition as Appendix B at pages 11a-54a.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people *peaceably* to assemble. . . . (emphasis supplied)

The Fourteenth Amendment to the United States Constitution provides:

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

JURISDICTION

1. Maggio does not disagree with the UFW's Statement of Jurisdiction as to the first Question Presented.

2. Maggio disagrees with the UFW's Statement of Jurisdiction as to the second Question Presented. The trial judge disqualification issue was the subject of a separate and original writ proceeding resulting in a published decision by the California Court of Appeal in 1985. The UFW's Petition for Review to the California Supreme

Court was also denied in 1985. Supreme Court of the United States, Rule 13 required the UFW to file a Petition for Writ of Certiorari within 90 days of that denial. This Court now has no jurisdiction to entertain this untimely Petition for Writ of Certiorari of the 1985 decision.

INTRODUCTION

The UFW argues that two issues justify a grant of certiorari. However, the record discloses that this was a purely factual dispute over whether there was violence on the picket line, how much and by whom, and what damage it caused. The UFW's Petition is based entirely on its own version of the evidence, not on the version believed by the trier of fact after nearly eleven months of trial.

The UFW's first issue is whether the courts below erred in shifting the burden to the UFW to prove which of Maggio's damages were caused by lawful strike activity as opposed to violent and unlawful activity. The UFW's central premise is that the trial court only required Maggio to show "some" connection between "some" violence and "some" of Maggio's damages. However, that premise grossly misrepresents the record. Substantial evidence supports the trial court's conclusion that the UFW committed repeated and consistent acts of violence during the strike, creating a "climate of violence" throughout the Imperial Valley. The trial court strictly required Maggio to establish a causal nexus between the UFW's violence and each claimed item of damage. Only after Maggio proved that UFW violence was a proximate and substantial cause

of Maggio's damages did the trial court, consistent with decisions of this Court and California courts, shift the burden to the UFW to allocate damages between lawful and unlawful conduct. The UFW expressly recognized in closing argument that it properly had the burden to make this allocation.

The UFW also challenges the California Court of Appeal's refusal to disqualify the trial judge two months into the trial. The motion to disqualify was based on the fact that six years before trial, the judge's wife worked for two days as a replacement worker in a Maggio carrot shed. First, this Court lacks jurisdiction to review this issue. This issue was raised before the California Court of Appeal in a separate and original writ proceeding and was the subject of a published decision. The California Supreme Court denied review on October 3, 1985. The UFW did not timely file a Petition for Writ of Certiorari. Therefore, this issue is not properly now before this Court.

In any event, the UFW's argument on the disqualification issue is purely factual and without merit. In rejecting the UFW's argument that the trial judge should be disqualified, the Court of Appeal applied the identical legal principles cited by the UFW in its Petition for Certiorari. The Court of Appeal merely held that, "on the facts of the case," the trial judge should not be disqualified. Therefore, even if this Court concludes it has jurisdiction to review this issue, certiorari should be denied since the issue is entirely factual.

STATEMENT OF THE CASE

A. Factual Background.

Labor negotiations between the Imperial Valley vegetable industry and the UFW began in late 1978. The UFW Executive Board sanctioned strikes against several growers, including Maggio, in January 1979.

The ensuing strike was bloody and violent. As discussed extensively in the Court of Appeal decision, UFW strikers committed relentless acts of violence that put the Imperial Valley under siege for months. Threats and violence occurred daily and were punctuated by several major confrontations. For example, on January 29, 1979, UFW strikers attacked bus loads of replacement workers, including women and teenagers from the community. Nearly 1,000 strikers threw foot-long chunks of cement through the bus windows, yanking at the doors as the terrified passengers screamed. On February 10, 1979, hundreds of UFW pickets stormed a field, throwing rocks, swinging clubs and using shovels to break bus windows. Two weeks later, 1,000 strikers again stormed a field, attacking replacement workers, buses and Sheriff's deputies with stakes, cement chunks and rocks. Gangs of UFW pickets threatened and attacked replacement workers on an almost daily basis to ensure that crops could not be watered, weeded or harvested. The UFW also had a "phantom crew," a group of young men that worked out of a black van at night. The phantom crew threatened and beat farm workers who dared to cross the picket lines.

The UFW has argued that it preached non-violence. However, despite videotapes of violent incidents clearly

instigated by UFW pickets, the UFW did not remove or discipline a single striker for violence.[1] Rather than make legitimate attempts to control the violence, the UFW condoned, encouraged and rewarded it. When the Imperial County Sheriff again pleaded with the UFW to control the picket lines after the February 10 riot, Cesar Chavez promised that if UFW pickets did not gain access to the fields, the UFW would "saturate Imperial County with more and more people and basically shut down the county's criminal justice system."

B. Procedural Background.

1. Trial Court Proceedings.

On May 9, 1983, Maggio and other growers sued the UFW in the Superior Court of the State of California, County of Imperial, for various torts arising out of violence during the strike. After the longest trial in the county's history, the trial court found by clear, unequivocal and convincing proof that the UFW "authorized, ratified and participated" in regular, consistent and repeated acts of violence from January 29, 1979 through June 30, 1979. The trial court also found that the UFW's "unlawful conduct was a substantial cause of plaintiff's loss materially contributing to plaintiff's injury." The trial court required Maggio to show – and Maggio did show – a causal nexus between UFW violence and each specific claimed item of damage. For example, as to every lost field claimed, Maggio presented detailed testimony about

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[1] Instead, it provided legal counsel and bail for strikers arrested for violence.

circumstances of the field and how the UFW's unlawful conduct made maintenance and harvesting impossible. Maggio also proved that the climate of fear created by the UFW's relentless violence made it nearly impossible to hire replacement workers.[2] After hearing detailed damage evidence, the trial court awarded damages to Maggio of $1,679,453. Judgment was entered on April 16, 1987.

2. California Court of Appeal Proceedings.

On June 15, 1987, the UFW filed a Notice of Appeal to the Court of Appeal for the State of California, Fourth Appellate District, Division One. On February 15, 1991, the Court of Appeal reduced the judgment by $1,011 and otherwise affirmed. The Court of Appeal exhaustively analyzed the lengthy record and each of the UFW's arguments. The court held that each of the trial court's findings was supported by substantial evidence.

3. California Supreme Court Proceedings.

On March 27, 1991, the UFW filed its Petition for Review with the California Supreme Court. That Petition was denied on May 16, 1991.

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[2] The UFW's own testimony proved that the UFW's violence, not union loyalty, made workers reluctant to cross the picket line. UFW Vice President Frank Ortiz testified that farm worker strikes are never successful because growers "always" get replacement workers. The evidence was overwhelming that Maggio's difficulty in hiring replacement workers during this strike resulted from the universal fear created by UFW violence.

4. The UFW Attempts to Stay Execution on the Judgment.

a. The Lower Courts' Decisions.

On June 20, 1991 the trial court denied the UFW's last minute request for a stay of execution on the judgment. The trial court ruled that "it was not reasonably probable that the issues will be considered to be sufficiently meritorious to grant certiorari."

On June 28, 1991, one day before Maggio could execute on the judgment, the UFW filed an "emergency motion" with the California Court of Appeal, requesting a stay of execution on the judgment or, in the alternative, a recall of the remittitur. The Court of Appeal granted a 30-day stay solely and expressly to allow the UFW to seek a further stay from this Court. Rather than do so, the UFW waited nearly the full 30 days and sought a further stay from the Court of Appeal. On July 25, 1991, the Court of Appeal denied the UFW's request for a further stay of execution.

b. Justice O'Connor Denies the UFW's Request for a Stay.

On July 26, 1991, the UFW filed an Application for a Stay of Execution on the Judgment along with its Petition for Writ of Certiorari with this Court. On June 29, 1991, Justice Sandra Day O'Connor denied the UFW's request for a stay of execution on the judgment. At 2:00 p.m., on July 29, 1991, Maggio executed on the entire amount of the judgment plus most of the interest then due.[3]

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[3] Pursuant to court order, the UFW in 1987 had deposited into an account one and a half times the judgment amount to

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5. The 1985 Proceedings on the Motion to Disqualify the Trial Judge.

On June 4, 1985, two months after trial began, an independent Superior Court judge denied the UFW's motion to disqualify the trial judge. The UFW contended that the trial judge should be disqualified because six years before the trial, the judge's wife was a replacement worker for two days in a Maggio carrot shed. After the independent trial judge denied the UFW's motion to disqualify, the UFW filed a peremptory writ of mandate to the California Court of Appeal, Fourth Appellate District, Division One. This action was a separate and independent original proceeding. In a published decision, the California Court of Appeal affirmed the denial of the UFW's motion to disqualify. The California Supreme Court denied review on October 3, 1985. The UFW did not file a Petition for Writ of Certiorari within 90 days of that denial as required by the United States Supreme Court Rule 13.

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stay execution on the judgment pending appeal. A check made payable to Maggio was prepared before the UFW received the 30-day limited stay from the California Court of Appeal. After Justice O'Connor denied the UFW's stay request, Maggio cashed this check and so has been paid in full except for the additional 30 days' interest referenced above. It is presently awaiting a check from the UFW for that additional interest.

REASON FOR DENYING THE PETITION

I The UFW's Reargument of the Proximate Causation Evidence Does Not Meet the Supreme Court Rule 10 Standard of Presenting a Special or Important Reason for Review by Writ of Certiorari.

Under Supreme Court Rule 10, this Court grants certiorari "only when there are special and important reasons therefor." This case does not raise important issues of federal law, constitutional or otherwise. Rather, this is a vigorously litigated factual dispute over the UFW's conduct during the 1979 labor strike. Based on eleven months of testimony and demonstrative evidence, the trial court concluded that Maggio established by clear and convincing proof that the UFW ratified, authorized and participated in regular, repeated and consistent acts of violence during the strike. The trial court further concluded that the UFW's violence was a substantial and proximate cause of damages to Maggio totalling $1,679,453.

The trial court's factual findings – affirmed by the California Court of Appeal – result from the trial court's careful evaluation of the testimony, videotapes and other demonstrative evidence. They do not present any legal issue worthy of this Court's review. As this Court said in *Superintendent v. Hill*, 472 U.S. 445, 461 (1985): "We do not grant a certiorari to review evidence and discuss specific facts." It is patently clear that no constitutional principle – whether the First Amendment or the right to strike – permits a labor union to commit violence on the picket line with impunity. Given the factual conclusion of the trial court concerning the UFW's violence, there are no

important federal principles implicated by holding the UFW accountable for the damages caused by its violence.

A. The Decisions Below Do Not Conflict With This Court's Decisions.

This Court has traditionally held that violent conduct committed during a labor strike is "beyond the pale of constitutional protection." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 932-933 (1982). Moreover, state courts unquestionably have (and must have) the power to compensate victims for damages caused by a labor union's violent torts on the picket line. *United Mine Workers v. Gibbs*, 383 U.S. 715, 730 (1966). Such victims may recover those damages that are " 'directly and proximately caused by wrongful conduct chargeable to defendants . . . as defined by the traditional law of torts . . . " *Id.* at 730.

Here, as noted above, the trial court required Maggio to prove that the UFW's violent conduct substantially and proximately caused each and every element of Maggio's damages. After an exhaustive review of the lengthy record, the California Court of Appeal held that substantial evidence supported the judgment. Thus, the verdict is entirely consistent with the decisions of this Court.[4]

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[4] The UFW's theory, repeated throughout its Petition For Writ of Certiorari, that Maggio was somehow held to a lesser burden of proof is also disproved by the fact that the trial court erroneously required Maggio to establish UFW participation in, or authorization or ratification of, strike violence by the

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B. The Decisions Below Do Not Conflict With Other State or Federal Court Decisions.

The UFW urges that the decisions below conflict with other state court and federal court decisions because (according to the UFW) the lower courts awarded damages without proof of proximate causation. The UFW insists – as it has throughout this litigation – that Maggio's losses did not result from strike violence, but rather from UFW's "peaceful picketing."[5] The debate over proximate cause is purely factual and was resolved in Maggio's favor by the trier of fact.

The UFW also asserts, without record citation, that the decisions below were based on "conclusory findings" and that the trial court only found that the UFW's violence substantially caused *some* damage to Maggio. This assertion is patently false. The trial court expressly found that the UFW's violent conduct was a substantial and proximate cause of all damages awarded. The trial court specifically found that the UFW's relentless violence caused all of Maggio's crop loss except for two early

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more stringent "clear, unequivocal and convincing" standard of proof, rather than a mere preponderance of the evidence. Although it did not need to decide the issue, the California Court of Appeal implied that the trial court erred in imposing on Maggio the more stringent standard of proof. *See* Appendix B to Petition, p. 18a, n.6.

[5] This was one of the UFW's major themes at trial and was soundly rejected by the trier of fact.

fields.[6] The court also expressly found that the violence caused Maggio other damage, such as security expenses, alternative housing costs and property damage.

The UFW also argues that in direct contrast to other state court and federal court decisions, the trial court here improperly and prematurely required the UFW to disprove (rather than requiring Maggio to prove) a causal nexus between the violence and each item of claimed loss. However, the record is clear that the trial court did not shift any burden to the UFW until after Maggio had proved that the UFW violence was a substantial and material cause of each item of damage. Both the California Court of Appeal and California Supreme Court correctly rejected the UFW's arguments to the contrary.

1. There is no Conflict Between the Decisions Below and the Ninth and Eleventh Circuit Decisions.

The UFW erroneously asserts that the decisions below conflict with decisions in the Ninth and Eleventh Circuits. However, the California Court of Appeal expressly relied on Ninth Circuit law in affirming the judgment. The Ninth Circuit holds that where the direct cause of loss is not separable between lawful and unlawful activity, the plaintiff may recover for the entire loss if

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[6] That the trial rejected Maggio's claims for these two early fields (which the trial court found were lost because Maggio was not ready for the strike and not because of strike violence) shows that the trial court carefully evaluated each of Maggio's damage claims.

the unlawful conduct was a substantial cause of the damage. *Rainbow Tours, Inc. v. Hawaii Joint Council*, 704 F.2d 1443, 1448 (9th Cir. 1983);[7] *Mead v. Retail Clerks Int. Ass'n, Local 839*, 523 F.2d 1371, 1374 (9th Cir. 1975). Moreover, the Eleventh Circuit in *Pantex Towing Corp. v. Glidewell*, 763 F.2d 1241 (11th Cir. 1985), expressly approved the court's analysis in *Rainbow Tours* and agreed, as both the courts below held, that "only those losses proximately caused by unlawful conduct may be recovered." See *Pantex, supra*, 763 F.2d at 1248-1249. As discussed below, this approach is consistent with *United Mine Workers v. Gibbs, supra*.

Here, the trial court expressly found that the UFW's unlawful conduct was a substantial cause of Maggio's damage. The trial court also concluded by implication that the "climate of violence" created by the UFW during the strike months rendered damages inseparable. As discussed below, the UFW itself acknowledged in closing argument that it properly had the burden to apportion damages between lawful and unlawful conduct. Thus, the

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[7] Interestingly, the UFW asserts that the Court of Appeal decision is in direct conflict with the Ninth Circuit's decision in *Rainbow Tours, Inc. v. Hawaii Joint Council, supra*, 704 F.2d at 1448. However, the Court of Appeal relied on the Ninth Circuit's opinion in *Frito Lay, Inc. v. Local U. No. 137, Intern. Broth.* (9th Cir. 1980), 623 F.2d 1354, 1362-1363, *cert. denied*, 449 U.S. 1013, 1112; see Appendix B at 28a, which was approved by the court in *Rainbow Tours*. Both *Rainbow Tours* and *Frito Lay* hold that where lawful activity is not separable, in determining damages caused by a labor union's unlawful conduct, "general tort principles apply and, therefore, 'substantial cause' does not mean sole or predominate cause, but simply a materially contributing factor." *Id.* at 1448.

case is not inconsistent with Ninth or Eleventh Circuit cases.

2. There is no Conflict Between the Decisions Below and Other State Courts of Last Resort.

The UFW also asserts that the decisions below conflict with decisions of other state courts of last resort because the trial court shifted the burden to the UFW to prove which damages, if any, were caused by the UFW's lawful conduct. However, as discussed above, the trial court shifted the burden only after Maggio proved that its damages were substantially and proximately caused by the UFW's violence. In *Fibreboard Paper Products Corp. v. East Bay Union of Machinists*, 227 Cal.App.2d 675 (1964), the jury awarded the employer damages based on the union's tortious picket activity. *Id.* at 686. Like the UFW, the union contended that the plaintiff had not met its burden of proof because the damages were divisible. *Id.* at 703. The basis of this assertion was that the plaintiff's loss was only partially caused by tortious conduct. *Id.* at 704. *Fibreboard* held that after the employer had proven damage from the union's unlawful activity, it was not required to prove non-separability of the damages. *Id.* at 705. Rather, the burden was then on the union to show which damages were caused solely by lawful conduct. *Id.* at 704-705.[8] The trial court here specifically followed

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[8] Were the rule otherwise, labor unions could commit violence on the picket line with impunity as long as they also committed a few interspersed, nonseparable, lawful acts.

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Fibreboard and shifted the burden to the UFW only after Maggio proved that violence was a direct, proximate and substantial cause of Maggio's damages.

During closing argument, the UFW freely acknowledged that *Fibreboard* is the law and that the burden of apportionment indeed shifted to the UFW once Maggio proved that violence was a substantial cause of Maggio's damages.[9] This was a significant acknowledgment by the UFW given that its expert economist made absolutely no effort to apportion damages. Notwithstanding this acknowledgment during trial, the UFW then changed its position on appeal and has since argued that *United Mine Workers v. Gibbs, supra,* somehow compels a rejection of *Fibreboard.*

In fact, *Gibbs* and *Fibreboard* are consistent. In *Gibbs,* two days of unlawful strike activity were followed by nine months of peaceful picketing. *Gibbs* merely held that

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Indeed, labor unions would have a strong incentive to commit violence throughout the strike to increase the difficulty of separating the effects of lawful and unlawful conduct.

[9] The UFW's counsel stated:

> Where it is clear that a defendant has been at fault and that he has caused some part of the plaintiff's damages, the burden of proof should rest upon him, the defendant, to show the extent of his contribution and that, if he cannot sustain it, he should be liable for the entire loss.
>
> And that's our burden in this case. That's what *Fibreboard* says. It shifts the burden so that now we have the burden of going forward and proving an allocation of proportionality.

where the lawful and unlawful conduct are separable, the union is liable only for damages caused by unlawful conduct. However, *Gibbs* acknowledges that liability for all damages caused by unlawful strike activity is proper where the results of peaceful and violent conduct are not separable. Here, the Court of Appeal correctly concluded that a finding of inseparability was implicit in the trial court's ruling.[10] *See Maggio, Inc. v. United Farm Workers*, 227 Cal.App.3d 847, 867 n. 14 (1991). (Appendix B, p.28a)

To the extent that the UFW is simply urging that *Gibbs* requires a direct and proximate relationship between unlawful conduct and the claimed damages, the trial court expressly found such a relationship in this case. Having acknowledged that *Fibreboard* is the law,[11] and having failed to even attempt to meet its burden under *Fibreboard*, the UFW is hardly in a position to urge this Court to devote its scarce resources to reviewing this issue.

The UFW also argues that the trial courts' "premature" shifting of the burden of proof to the UFW conflicts with the highest state court decisions in Connecticut and Pennsylvania. *See United Aircraft Corp. v. Int'l. Ass'n. of Machinists, et al.*, 161 Conn. 79, 285 A.2d 330 (1971), *cert.*

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[10] The UFW pickets committed violence throughout the many months of the strike both in major confrontations and on a daily basis, creating what the trial court called a "climate of violence." The constant violence was plainly inseparable from whatever lawful picketing also occurred during the same time.

[11] Any argument that *Fibreboard* is no longer good law in California is belied by *Haft v. Lone Palm Hotel*, 3 Cal.3d 756, 754 (1970), a post-*Gibbs* California Supreme Court decision that cites *Fibreboard* with approval.

denied, 404 U.S. 1016 (1972), *on appeal following remand*, 169 Conn. 473, 363 A.2d 1068 (1975), *cert. denied*, 425 U.S. 973 (1976); *Stryjewski v. Local Union No. 830*, 451 Pa. 550, 304 A.2d 463 (1973). However, both these decisions merely illustrate the application of the legal principles outlined above to the facts of the particular case.

For example, in *United Aircraft Corp.*, the Connecticut Supreme Court merely followed *Gibbs*. The court expressly held that the trial court:

> [O]nly had to determine what damage resulted from the tortious acts [of the union]. . . . Whenever loss results to a party naturally and directly from the tortious or illegal act of another, the loss is the proper subject of judicial relief by compensation in damages. [citations omitted]. . . . There must be a causal relation established between the tort and the damage sustained. . . . [T]he basic aim is to compensate the plaintiff for the loss caused by the tortious conduct so far as money can do so.

United Aircraft Corp., 285 A.2d at 344. The court decided *on the facts of that case*, that the burden of proving which damages were caused by the union's lawful activities would not be shifted to the union *until* plaintiff met its burden of proof. *Id.* at 342. Here, in contrast, the trial court concluded based on substantial evidence that Maggio clearly met its burden of proof.

Similarly, *Stryjewski v. Local Union No. 830, supra*, is distinguishable on its facts. The court there held that the plaintiff-employer failed to meet its initial burden of proving a causal nexus between the strikers' illegal picketing and the plaintiff's damages. In fact, in contrast to

this case, the record in *Stryjewsky* was devoid of any specific factual findings that revealed 1) the "duration and severity" of the strikers' illegal conduct; 2) how damages were calculated or apportioned; and 3) the specific injuries sustained by the plaintiff. *See Stryjewski*, 304 A.2d at 554. To the extent that *Stryjewski* requires a plaintiff to prove that its damages resulted *solely* from unlawful picketing, the case is an aberration.

II This Court Has No Jurisdiction to Review the Issue Concerning Disqualification of the Trial Judge.

The UFW asserts that this Court should review a California Court of Appeal decision which was presented in an entirely separate and original writ proceeding when the California Supreme Court denied review almost six years ago, on October 3, 1985. However, United States Supreme Court Rule 13 provides:

> A petition for writ of certiorari seeking review of a judgment of a lower state court which is subject to discretionary review by the state court of last resort shall be deemed *in time* when it is filed with the Clerk within *90 days* after the entry of the order denying discretionary review. (emphasis supplied.)

Here, the UFW did not file its Petition for Writ of Certiorari within 90 days of the California Supreme Court's denial of its Petition.

An untimely filing of a Petition for Writ of Certiorari mandates that this Court deny certiorari because it lacks

the necessary jurisdiction. *See* 28 U.S.C. § 2101(c); *Department of Banking v. Pink*, 317 U.S. 264 (1942); Supreme Court Rule 13(3) ("The Clerk will refuse to receive any petitions for a writ of certiorari which is jurisdictionally out of time.") Thus, certiorari should be denied on this issue.

III Even on the Merits, the Disqualification Issue Does Not Warrant Supreme Court Review.

After two months of trial, the UFW moved to disqualify the trial judge because six years before the trial, the trial judge's wife, Mrs. Lehnhardt, worked in a Maggio carrot shed for two days as a replacement worker. The trial judge himself had no direct association, pecuniary or otherwise, with Maggio. The UFW attempted to create the inference that Mrs. Lehnhardt's two days in the carrot shed established that she was anti-union and that Judge Lehnhardt, therefore, must be anti-union as well. However, as emphasized in the Court of Appeal decision, the UFW did not cite to a single instance during the two months of trial where Judge Lenhardt had exhibited any bias in Maggio's favor.[12] Even now, the UFW points to no

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[12] Indeed, a review of the record reveals that Judge Lenhardt was extremely accommodating to the UFW and gave it every conceivable opportunity to prove its case. The trial court required Maggio to prove an extremely strict nexus between UFW violence and Maggio's claimed damages. As discussed above, the trial court also improperly required Maggio to meet the stricter "clear and convincing proof" standard in establishing the UFW's liability for strike violence. These are hardly the actions of a trial judge who is biased against labor unions.

instance of bias except (from the UFW's viewpoint) the trial court's verdict in Maggio's favor. Of course, the Court of Appeal independently determined that the verdict was based on substantial evidence.

In any event, the premise of the UFW's disqualification motion was that Mrs. Lehnhardt must have been reflecting some anti-labor union views of her husband when she worked for two days in the Maggio carrot shed. However, as the Court of Appeal pointed out, a woman is no longer merely a reflection of her husband's views and opinions. Mrs. Lehnhardt needed neither her husband's permission nor blessing to work in the carrot shed. Her autonomy – along with the remote and brief nature of her work and Judge Lehnhardt's exemplary conduct during the two months of trial – all properly led the Court of Appeal to affirm the denial of the motion to disqualify. That affirmance presents no issue that merits review by this Court.

CONCLUSION

The UFW does not raise a single issue that merits a grant of certiorari by this Court. Accordingly, this Court should deny the petition for writ of certiorari.

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Respectfully submitted,

MARCELLE E. MIHAILA
JAY W. JEFFCOAT
GRAY, CARY, AMES & FRYE
Attorneys for Respondent, Maggio, Inc.
401 B Street, Suite 1700
San Diego, California 92101-4297
(619) 699-2742